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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/964,838

09/28/2001

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TPP 31424

3731

74217 7590 08/14/2008

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1000 West Tower

Washington, DC 20005

EXAMINER

HUSON, MONICA ANNE

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

08/14/2008

PAPER

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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6
7 Ex parte MAGNUS N. NILSSON,
8 LARS OHLSSON,
9 MAGDALENA CHRISTIANSSON,
10 KRISTER HANSSON,
11 JAN ERICSSON
12

13 Appeal 2008-3294
14 Application 09/964,838
15 Technology Center 1700
16

17
18 Oral Hearing Held: July 9, 2008
19

20
21 Before BRADLEY R. GARRIS, CATHERINE Q. TIMM,
22 and KAREN M. HASTINGS, Administrative Patent Judges
23

24 ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for hearing on Wednesday,
2 July 9, 2008, commencing at 1:01 p.m., at the United States Patent and
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Christine
4 L. Loeser, Notary Registration No. 334477, Notary Public.

5 JUDGE GARRIS: Good afternoon, Mr. Pavelko.

6 MR. PAVELKO: Good afternoon, Your Honors.

7 JUDGE GARRIS: Please begin when you are ready. You have
8 20 minutes, as you know.

9 MR. PAVELKO: Initially, I would like to point out that this
10 case was remanded to the examiner for various problems with the examiner
11 to answer. The examiner submitted either a substitute or a supplemental
12 examiner's answer.

13 I pointed to the examiner at the time that there were various
14 deficiencies with that, in that there were a number of rejected claims that
15 were still listed in that supplemental or substitute examiner's answer and also
16 that some of the rejections were based on rejections of canceled claims
17 which do not appear in this.

18 She never responded. I made it of record and, as far as I know,
19 there was no further supplementation of that. But I will go forward as if the
20 rejections are set forth in this.

21 Initially, there are various independent claims of different
22 scope. We will take claim 27 first. There is in claim 27 a glazing that takes
23 place. We have three layers. The layers are core, and a what we call decor
24 or decorative layer, and on top of that a lacquer layer.

25 We emboss the lacquer layer. So what you have would be a top
26 layer with differing heights or differing indentations and embossed layer.

1 And then we apply to that embossed layer a glazing. This is
2 nowhere taught by the combination of the two references, Scher and
3 Schmooock.

4 JUDGE GARRIS: We are on claim 27 now?

5 MR. PAVELKO: I'm sorry, 32.

6 JUDGE GARRIS: You want to talk about 32 first?

7 MR. PAVELKO: Excuse me?

8 JUDGE GARRIS: We are talking about claim 32 first?

9 MR. PAVELKO: 32, the glazing.

10 JUDGE GARRIS: That requires glazing rollers --

11 MR. PAVELKO: Glazing rollers.

12 JUDGE GARRIS: -- for the glaze process.

13 MR. PAVELKO: Right. In that glazing, Scher shows a
14 conventional laminate forming where there is a core, there is an upper and
15 lower pressed plate. It's shown in his figure 1.

16 The upper pressed plate does have embossing indentations on
17 there, and then you have, between the core and that upper layer, you have
18 the decor or printed sheet and then you have an overlay sheet.

19 In his case, the overlay sheet is a paper sheet impregnated with
20 resin. There is no equivalent to our lacquer.

21 So he doesn't do the basic process. He doesn't emboss a
22 lacquer-containing product, and then further, there is no possibility he can
23 glaze a lacquer because he has no lacquer to start with.

24 So even if his upper layer was a -- which is a paper sheet, were
25 embossed, there is no glazing even contemplated for paper sheets.

1 JUDGE GARRIS: He does have embossing. That much is
2 clear.

3 MR. PAVELKO: He does have embossing. No doubt he has
4 embossing. Figure 1 clearly shows a combination of elements that will show
5 embossing. But it is not of the materials that we are claiming, which is a
6 lacquered upper surface which is being in contact with the embossing.

7 If you look at 32, we say pressing the roller or mold into the
8 lacquer, so we are talking about embossing the lacquer which, since he
9 doesn't have any lacquer, there is no embossing of a lacquered surface which
10 then is subsequently treated to create a glaze. It's basically a glassy surface
11 on portions of that previous-embossed layer.

12 JUDGE GARRIS: Of course, the examiner is relying on the
13 Schmooch reference for that application. I guess he wants to substitute the
14 lacquer layer taught by Schmooch for the melamine resin coating 15 of
15 Scher, and that's how he gets that lacquer layer, which is embossed.

16 It is embossed in Scher as we discussed earlier. So he's also
17 relying on Schmooch for these glazing rollers, is he not?

18 MR. PAVELKO: In Schmooch, Schmooch is making a
19 completely different article. He's got a leather. He wants to put a coating
20 onto the leather. And leather by its very nature has a -- I guess you would
21 call it a rough surface, which is the, say, an alligator-hide-type surface.

22 That would be the surface he wants to coat and a smooth
23 surface which he doesn't care about. In figure 3 he shows that. This is
24 figure 3 of Schmooch where the layer 15 -- this is inverted so 15 is a carrier
25 which is really on the bottom but it shows it in figure 3 on the top.

1 16 is a lacquer, but that is a release layer to release 15 from 13
2 and 11, which are the coatings that he is putting onto the leather, which is 2.

3 Again, even presuming that that lacquer layer is the layer that
4 could be substituted for the upper layer here, you don't have any glazing of
5 that layer in Schmooch.

6 So the proposed combination of the two references still doesn't
7 leave you with anything other than yes, you can use rollers as in figure 5 in
8 Schmooch. Rollers are known to be embossing materials.

9 JUDGE GARRIS: I got the impression the examiner was
10 suggesting that these -- the roller -- the disclosure in Schmooch of rollers
11 would satisfy the requirement of claim 32 for glazing rules.

12 MR. PAVELKO: A glazing roller makes it glassy. I mean, the
13 surface is being finished. It makes it glassy. A smoothing roller makes it
14 smooth. The glazing makes it glassy.

15 This is an embossing roller in Schmooch. 5 is clearly stated to
16 be embossing. 36 and 35 are the elements shown there and...

17 JUDGE GARRIS: It could be either embossed or not
18 embossed, I guess, right? In Schmooch. It could be smooth --

19 MR. PAVELKO: Right.

20 JUDGE GARRIS: -- it could be embossed.

21 MR. PAVELKO: It could be smooth or embossed. But we
22 have both. We have an embossed lacquer.

23 If you take our product, the upper surface is the lacquer layer.
24 The upper surface is embossed and then the upper surface is further treated
25 to make it glassy on some portions of that surface.

1 Of course, the portions that would be glassy are going to be the
2 raised portions compared to the depressions of an embossed surface. We
3 don't have that at all.

4 JUDGE GARRIS: Can you point us to anything in your spec
5 that would help us to understand the difference between your glazing rollers
6 and your other rollers?

7 MR. PAVELKO: We claim embossing. That's the first step.
8 Then we say it could be either a mold -- a mold is kind of a fixed, three-
9 dimensional article that is placed between a press, some kind of mechanical
10 pressure-inducing device and the work.

11 Or you can have a roller which is not fixed. It is usually
12 circumferential surface is embossed with a pattern. As it rotates and the
13 work passes beneath it, it also presses an embossing.

14 A glazing roller, by contrast, just makes the surface glassy,
15 introduces the surface sheen.

16 JUDGE GARRIS: How is it doing that, is my question. Do we
17 have something in the spec that would help us to appreciate the difference in
18 what is happening?

19 Because on page 2, of course, I saw there was disclosure of
20 glazing rollers. But I couldn't -- I really couldn't quite see what was being
21 done there that was different from the other kind of -- the embossing rollers
22 that you discussed.

23 It says here --

24 MR. PAVELKO: I know we are talking about the instruction
25 and not the specification.

1 JUDGE GARRIS: -- in the last full paragraph, about halfway
2 through, it says, The structured rollers -- and those would be, I guess, your
3 embossing rollers -- is preferably heated to a surface temperature above 40
4 degrees C, preferably in this range of 50 to 150 degrees C.

5 Then it says the glazing rollers are preferably heated to a
6 temperature above 30 degrees C, preferably in the range of 35 to 100
7 degrees C for the same reason.

8 It just seems like you have got rollers in each case that are
9 operating in the overlapping temperature ranges.

10 MR. PAVELKO: Right. One is a structured surface roller. We
11 talk about that, use that term in the spec. That is the embossing roller. It has
12 got a surface which is imparted to the work. In effect, it gives a negative of
13 the surface of the roller or mold to the work that's being pressed.

14 The glazing, on the other hand, does not induce a further
15 embossing. What it does is make a glassy surface on the portions which that
16 roller touches.

17 JUDGE GARRIS: How does it do that that is any different
18 from the other roller?

19 MR. PAVELKO: It's a smooth surface roller.

20 JUDGE GARRIS: It doesn't say that.

21 MR. PAVELKO: In the original claim -- I am looking at
22 original claim 40 here -- we say the glazing roller is provided in the counter-
23 stay roller which the surface element is past. The previous claim says a
24 structure roller is provided.

1 Even though they are both rollers, it should be understood that
2 they are performing different functions in the process. I'm trying to find the
3 original specs.

4 I guess the specification, the middle paragraph -- I guess it's the
5 second full paragraph on page 3, talks about a structured roller. That's for
6 the embossing and then a glazing roller.

7 JUDGE TIMM: So the structured layer performs the
8 embossing step and the glazing roller performs the smoothing step; is that
9 correct?

10 MR. PAVELKO: The steps that they perform are different,
11 yes. The embossing roller creates the surface structure in the lacquer and the
12 glazing makes a surface finish to that embossed structure. The surface finish
13 is glassy or glazing.

14 Let me continue on. Again, in the other independent claim 27,
15 we have here the steps of creating that lacquer in various layers with a
16 partial curing between each laying down of the partial part of the layer.

17 Again, it's even further removed from reference because, again,
18 Scher has no lacquer. There's no process in Scher where he says, I can build
19 up my top layer in various stages.

20 If you combine it with Schmoock, as the examiner has
21 suggested, although there is a lacquer layer in that process of Schmoock, it's
22 not the upper layer that's being embossed; it's not the layer that's being
23 glazed, and again, it's not even the layer here that is being built up in a
24 number of intermediate layers with partial curing.

25 So that combination also doesn't really advance the rejection.
26 He does add Correll. Now, the Correll reference again is a single layer.

1 If you look at what the examiner cites beginning at page -- I'm
2 sorry, column 6, line 66, he says, A partial cure step is initiated by exposing
3 a layer of curable material to UV radiation resulting in a cure at or near the
4 surface of the layer.

5 If you read down a few more lines, at column 7, lines 6 to
6 maybe 10, he said, The subsequent compression step encounters a layer
7 having a partially cured skin at its surface.

8 So what's happening in Correll is he takes a layer of resin. It's
9 partially cured, which creates a layer of skin. When he presses that skin, that
10 skin helps in the pressing process. It retains or contains the still liquid
11 material beneath that skin.

12 There is no teaching of a build-up of various layers by that
13 process. The examiner just kind of jumps right across that and he says,
14 Well, that would be clear that you could build up layers. But why? It's a
15 completely different purpose than in Correll.

16 JUDGE GARRIS: I think the examiner cited column 8 for that
17 disclosure of applying multiple layers with intermediate curing.

18 MR. PAVELKO: That's our claim step. The examiner says it's
19 taught but he doesn't show it in that part that he cites to. We also --

20 JUDGE GARRIS: It is column 8, line 60, is where that
21 disclosure begins.

22 MR. PAVELKO: Okay. That's a completely different
23 embodiment in which he is making powder layers. Powder layers, it is not
24 lacquered. Too, it doesn't have a partial curing.

1 Here he's melting prior to application of a further outer layer.
2 He's not building up a lacquer layer in stages with partial curing between
3 each stage of applying the further portion of the layer.

4 So again, he doesn't have it at column 6 to 7, which he cites,
5 and if you read why he is doing it in 7, it is a completely different reason.

6 Then he just jumps to 8, which is a different embodiment
7 altogether, which is a powder process which has nothing to do with the
8 previous process at all.

9 JUDGE GARRIS: I think it's all -- I think it's all -- these don't
10 seem to be separate embodiments here. Correll seems to be discussing the
11 application of a powder to apply a coating on these fiber boards and what
12 not.

13 He just says these are the different things you can do. You can
14 apply them and partially cure and fully cure. You can apply successive
15 coatings, that sort of thing.

16 It seems like the examiner is relying on Correll not for a
17 teaching of the lacquer aspect of claim 27 but instead just for the idea of
18 applying successive layers and partially curing each layer as you are
19 applying it in order to achieve the benefits that Correll discusses.

20 MR. PAVELKO: Right. I understand that's what he's doing.
21 But remember, the primary references don't have lacquer at all so you still
22 have got to correct that.

23 If he is using Correll for that and he is relying on 6 to 7, column
24 6 to 7, it doesn't teach that multilayer process there. It is just forming a skin
25 with this partial curing on one single layer.

1 Then he jumps down to column 8, which is talking about
2 powder layers. Again, we don't have an analogy between the powder and
3 the lacquer. All he is saying is powder layers may be applied one over the
4 other, and the reason he is doing it is so that he can abrade -- he says abrade
5 or slice portions of the outer layers, thereby exposing the below layers.

6 But it doesn't really have anything to do with the steps that we
7 were doing which were building up a lacquer top coat with partial curing by
8 making a plurality of layers, partially curing making a further deposit, and
9 partially curing and so forth. It doesn't go to that at all.

10 So again, he makes the statement. He paraphrases our claim
11 and says the reference shows it. When you go to the reference, it doesn't
12 show it.

13 If you want to establish a 103, at least the reference must have
14 the teaching of the step, not to say, Here is what you are doing. The
15 reference doesn't really teach this, but it would be obvious in view of that
16 reference.

17 Where is the connection between the teaching of the reference
18 and the claimed dimension, other than the paraphrase of our own claim?

19 He hasn't pointed to any part of Correll that would support what
20 we are doing. He's giving other layering device, other layering techniques
21 and saying ours would be obvious. But where does he come up with the
22 teaching of multilayer lacquer with a partial curing between each lay-down
23 of the layer? He doesn't have that.

24 JUDGE GARRIS: In other words, you think it is improper for
25 the examiner to rely on Schmooch for the lacquer and then on Correll for
26 applying successive layers with partial curing?

1 MR. PAVELKO: Schmooch, again, as I said, Schmooch has a
2 lacquer but it is not at the upper surface. It is a release layer between a
3 carrier.

4 JUDGE GARRIS: Maybe I should correct you on that because,
5 actually, Schmooch does teach using lacquer layers for what he calls both
6 the inner layer as well as the outer layer.

7 This is shown in figure 1 as elements 3 and 6, and according to
8 Schmooch, these could be lacquered layers, in addition to many other
9 materials. That's fairly clear.

10 It's not -- I'm not sure where you got that idea that Schmooch
11 only uses a lacquered layer for his release layer because that's not the case.

12 MR. PAVELKO: In reading Schmooch before, I was looking
13 for the word "lacquer." The only place it appears would be in that
14 discussion of that example for his figure, which I referred to, showing the
15 carrier 15. I believe it's his figure 3.

16 JUDGE GARRIS: It appears at the bottom of column 6, it says
17 there at line 66 that the outer layer comprises two or more superimposed
18 strata, the outer stratum, and such composite outer layer can include the
19 lacquer. It's the outer layer.

20 MR. PAVELKO: If you look at column 12, right, a suitable
21 lacquer constitutes one of the presently preferred separating or separation-
22 promoting layers between the outer layer of 6 and the coating 1 of the
23 adjacent side 16 of the carrier 15.

24 JUDGE GARRIS: It's another teaching of something else that
25 can be a lacquer, but my point is the examiner is correct that Schmooch does
26 teach an outer layer of a coated substrate can be a lacquer.

1 MR. PAVELKO: But it's not the part that's being embossed.

2 JUDGE GARRIS: It's the outer layer, it's the outer layer which
3 can be embossed.

4 MR. PAVELKO: I think it's the outer layer because you are
5 stripping the carrier from it. But carrier 15, if you look at figure 5 in
6 combination with 3, 15 is the carrier layer which can be a foil, a paper,
7 plastic, whatever.

8 It's not really part of the article. It's a carrier. It's a temporary
9 support. That's what I think he's talking about at column 12, lines 10 to 13
10 or so.

11 I suggested two independent claims. I wanted lastly to address
12 at least the independent claim 29. Here we have a much more specific
13 process. We have a base layer where the base layer is fiber board or particle
14 board. We have a decor and then we have this wear layer of the UV or
15 electronic beam curing lacquer.

16 So again, the same basic build-up of more specific materials
17 which say what the lacquer is. We say what the wear layer includes, such as
18 hard particles, and we give materials.

19 We again position the structure roller or mold on top of the
20 lacquer, provide that roller or mold with an embossing surface and then heat
21 that to a certain surface temperature and then press it into the lacquer to
22 provide the lacquer with that surface structure.

23 So again, although similar to claim 32, it's much more specific.
24 Again, the examiner seems to intimate it's taught by Scher, Schmooch and
25 other references, McQueen, Petrie and James.

1 Again, when you go to those combination of references,
2 McQueen cracks. What he does is use a roller to crack a coating. He splits
3 it so as to give it that -- not only an embossed look but a crackled-surface
4 look, and Petrie has a foam plastic which he is densifying with a roller.

5 And EB also is embossing a different type of material, a PVC
6 layer. Again, he is combining all different kinds of techniques that could be
7 used in other processes with Scher and Schmooock and saying that would
8 have been obvious under 103 to order a worker skilled in the art at the time
9 this invention was made without really going into why that would be so.

10 Not necessarily why the motivation is there but why would
11 there be that expectation of doing what we are doing here.

12 He's got different -- the same apparatus but doing different
13 processing steps, not achieving the same type of product we are doing, not
14 intending to achieve the same process that we are intending to achieve, but
15 he is saying it would be obvious.

16 There is no tying together of why he has selected these
17 references and made the combination. As I said, if you read the three other
18 references he provides with Scher and Schmooock, they seem to be drawn
19 from not-analogous arts for different reasons. The purposes they are using
20 there is different purposes and just trying to meet each of the limitations of
21 the claim.

22 JUDGE GARRIS: Okay. We are about out of time. Anything
23 else?

24 MR. PAVELKO: Excuse me?

25 JUDGE GARRIS: We are out of time. Anything else you care
26 to add?

1 MR. PAVELKO: I did want to point out that they reject claims
2 42 and 53. Both those claims are canceled.

3 There is one claim 44, for further reference, Gritten, I will let,
4 and claim 54, for further reference, Schmitt. I will not separately address
5 those rejections.

6 But again, it is still as a dependent on the basic combination of
7 the limitations of the independent claims, adding more limitations with a
8 different reference to meet those additional limitations still does not correct
9 the deficiencies of the primary references.

10 Are there further questions?

11 JUDGE GARRIS: Judge Timm, any questions?

12 JUDGE TIMM: No questions.

13 JUDGE GARRIS: Judge Hastings?

14 JUDGE HASTINGS: No.

15 MR. PAVELKO: Thank you very much.

16 JUDGE GARRIS: Thank you.

17 Whereupon, the proceedings at 1:25 p.m. were concluded.